

ASSEMBLY BILL

No. 612

Introduced by Assembly Member Beall

February 25, 2009

An act to amend Section 3111 of, and to add Sections 3005, 3045, 3100.5, and 3110.6 to, the Family Code, relating to custody and visitation.

LEGISLATIVE COUNSEL'S DIGEST

AB 612, as introduced, Beall. Custody and visitation: nonscientific theories.

Existing law governs the determination of child custody and visitation with a child in contested proceedings. Existing law provides for the use of court-appointed investigators, as defined, including court-appointed evaluators directed by the court to conduct a child custody investigation in those proceedings. Existing law authorizes the court to appoint a child custody evaluator if the court determines it is in the best interest of the child. If directed by the court, the evaluator is required to file a written confidential report on his or her evaluation. The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report. Existing law requires the Judicial Council to adopt standards for court-connected evaluations, investigations, and assessments related to child custody.

This bill would prohibit a court from considering a nonscientific theory, as defined, in making a determination regarding child custody or visitation with a child. The bill would also prohibit a court from considering or receiving into evidence a report, assessment, evaluation, or investigation prepared pursuant to the provisions described above if it includes a nonscientific theory. By revising the standards for

court-connected evaluations, investigations, and assessments related to child custody, the bill would require the Judicial Council to adopt rules and forms implementing those revised standards.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3005 is added to the Family Code, to
2 read:

3 3005. “Nonscientific theory” means a theory regarding human
4 behavior and interactions that is not consistent with generally
5 accepted clinical, forensic, scientific, diagnostic, or medical
6 standards as promulgated by a majority of licensed professionals
7 in the medical, psychiatric, and psychological communities,
8 including, but not limited to, an alienation theory.

9 SEC. 2. Section 3045 is added to the Family Code, to read:

10 3045. In a proceeding to determine child custody, a court shall
11 not consider a nonscientific theory in making that determination.

12 SEC. 3. Section 3100.5 is added to the Family Code, to read:

13 3100.5. In a proceeding to determine visitation with a child, a
14 court shall not consider a nonscientific theory in making that
15 determination.

16 SEC. 4. Section 3110.6 is added to the Family Code, to read:

17 3110.6. Notwithstanding any other provision of law, in any
18 contested proceeding involving child custody or visitation rights,
19 a court may not consider and may not receive into evidence a
20 report, assessment, evaluation, or investigation prepared pursuant
21 to this chapter if that report, assessment, evaluation, or investigation
22 includes a nonscientific theory.

23 SEC. 5. Section 3111 of the Family Code is amended to read:

24 3111. (a) In any contested proceeding involving child custody
25 or visitation rights, the court may appoint a child custody evaluator
26 to conduct a child custody evaluation in cases ~~where~~ *in which* the
27 court determines it is in the best-interests *interest* of the child. The
28 child custody evaluation shall be conducted in accordance with
29 the standards adopted by the Judicial Council pursuant to Section
30 3117, and all other standards adopted by the Judicial Council
31 regarding child custody evaluations. If directed by the court, the
32 court-appointed child custody evaluator shall file a written

1 confidential report on his or her evaluation. At least 10 days before
2 any hearing regarding custody of the child, the report shall be filed
3 with the clerk of the court in which the custody hearing will be
4 conducted and served on the parties or their attorneys, and any
5 other counsel appointed for the child pursuant to Section 3150.
6 ~~The~~ *Except as otherwise provided in Section 3110.6, the report*
7 may be considered by the court.

8 (b) The report shall not be made available other than as provided
9 in subdivision (a), or as described in Section 204 of the Welfare
10 and Institutions Code or Section 1514.5 of the Probate Code. Any
11 information obtained from access to a juvenile court case file, as
12 defined in subdivision (e) of Section 827 of the Welfare and
13 Institutions Code, is confidential and shall only be disseminated
14 as provided by paragraph (4) of subdivision (a) of Section 827 of
15 the Welfare and Institutions Code.

16 (c) ~~The~~ *Except as otherwise provided in Section 3110.6, the*
17 report may be received in evidence on stipulation of all interested
18 parties and is competent evidence as to all matters contained in
19 the report.

20 (d) If the court determines that an unwarranted disclosure of a
21 written confidential report has been made, the court may impose
22 a monetary sanction against the disclosing party. The sanction
23 shall be in an amount sufficient to deter repetition of the conduct,
24 and may include reasonable attorney's fees, costs incurred, or both,
25 unless the court finds that the disclosing party acted with substantial
26 justification or that other circumstances make the imposition of
27 the sanction unjust. The court shall not impose a sanction pursuant
28 to this subdivision that imposes an unreasonable financial burden
29 on the party against whom the sanction is imposed. This
30 subdivision shall become operative on January 1, 2010.

31 (e) The Judicial Council shall, by January 1, 2010, do the
32 following:

33 (1) Adopt a form to be served with every child custody
34 evaluation report that informs the report recipient of the
35 confidentiality of the report and the potential consequences for the
36 unwarranted disclosure of the report.

37 (2) Adopt a rule of court to require that, when a court-ordered
38 child custody evaluation report is served on the parties, the form
39 specified in paragraph (1) shall be included with the report.

- 1 (f) For purposes of this section, a disclosure is unwarranted if
- 2 it is done either recklessly or maliciously, and is not in the best
- 3 interests of the child.